

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14

<input checked="checked" type="checkbox"/> FILED	<input type="checkbox"/> RECEIVED
<input type="checkbox"/> ENTERED	<input type="checkbox"/> SERVED ON
COUNSEL/PARTIES OF RECORD	
JUL 10 2018	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY _____

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\*\*\*

KARL W. SCHENKER,

Case No. 3:17-cv-00733-MMD-VPC

Plaintiff,

ORDER

v.

NEVADA DEPARTMENT OF  
CORRECTIONS, *et al.*,

Defendants.

Plaintiff, who is a prisoner in the custody of the Nevada Department of Corrections ("NDOC"), has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983, and has filed an application to proceed *in forma pauperis*, a motion for appointment of counsel, a motion to extend the copy limit, a motion to show cause, a motion for res extincta, a February 5, 2018 notice (ECF No. 5), a March 29, 2018 notice (ECF No. 6), and a June 25, 2018 notice (ECF No. 8) (ECF No. 1-1, 1-2, 1-3, 3, 4, 5, 6, 8). The matter of the filing fee shall be temporarily deferred.

**I. Motion for Appointment of Counsel**

Plaintiff has filed a motion for appointment of counsel. (ECF No. 1-2). A litigant does not have a constitutional right to appointed counsel in 42 U.S.C. § 1983 civil rights claims. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). Pursuant to 28 U.S.C. § 1915(e)(1), "[t]he court may request an attorney to represent any person unable to afford counsel." However, the court will appoint counsel for indigent civil litigants only in "exceptional circumstances." *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (§

1 1983 action). "When determining whether 'exceptional circumstances' exist, a court must  
2 consider 'the likelihood of success on the merits as well as the ability of the petitioner to  
3 articulate his claims *pro se* in light of the complexity of the legal issues  
4 involved." *Id.* "Neither of these considerations is dispositive and instead must be viewed  
5 together." *Id.*

6 In the instant case, the Court does not find exceptional circumstances that warrant  
7 the appointment of counsel. The Court denies the motion for appointment of counsel at  
8 this time, without prejudice.

## 9 **II. Motion to Extend the Copy Limit**

10 Plaintiff has filed a motion to extend his copy work limit. (ECF No. 1-3). An inmate  
11 has no constitutional right to free photocopying. *Johnson v. Moore*, 948 F.2d 517, 521 (9th  
12 Cir. 1991). Pursuant to NDOC administrative regulation 722.01(7)(D), inmates "can only  
13 accrue a maximum of \$100 debt for copy work expenses for all cases, not per case." In  
14 this district, courts have found that they can order a prison to provide limited photocopying  
15 when it is necessary for an inmate to provide copies to the court and other parties. See  
16 *Allen v. Clark Cnty. Det. Ctr.*, 2:10-CV-00857-RLH, 2011 WL 886343, \*2 (D. Nev. Mar. 11,  
17 2011).

18 Plaintiff has presented no information to indicate that an extension is necessary at  
19 this time, and it is apparent that Plaintiff has been able to file a significant number of  
20 documents in this case since filing his motion for an extension of the copy work limit.  
21 Therefore, the Court will deny the motion to extend the copy work limit without prejudice  
22 to Plaintiff renewing the motion in the future should he be able to demonstrate a need for  
23 an extension at that time.

## 24 **III. Motion to Show Cause and Motion for Res Extincta**

25 On December 27, 2017, Plaintiff filed a motion to show cause. (ECF No. 3). On  
26 January 16, 2018, Plaintiff filed a motion for res extincta regarding the motion to show  
27 cause. (ECF No. 4). In the motion for res extincta, Plaintiff represented that the motion  
28 to show cause was moot. (*Id.* at 1.) The Court construes the motion for res extincta as a

1 motion to dismiss the motion to show cause. So construed, the motion for res extincta  
2 (ECF No. 4) is granted and the motion to show cause (ECF No. 3) is dismissed as moot.

#### 3 IV. Leave to Amend

4 It appears to the Court that, in Plaintiff's February 5, 2018 notice (ECF NO. 5),  
5 March 29, 2018 notice (ECF No. 6), and June 25, 2018 notice (ECF No. 8), Plaintiff seeks  
6 to amend his complaint. The Court will not piecemeal documents together to determine  
7 whether Plaintiff states any colorable claims in his complaint. The Court therefore declines  
8 to screen Plaintiff's complaint at this time and grants Plaintiff leave to file a First Amended  
9 Complaint.

10 If Plaintiff chooses to file an amended complaint he is advised that an amended  
11 complaint supersedes (replaces) the original complaint and, thus, the amended complaint  
12 must be complete in itself. See *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896  
13 F.2d 1542, 1546 (9th Cir. 1989) (holding that "[t]he fact that a party was named in the  
14 original complaint is irrelevant; an amended pleading supersedes the original"). Plaintiff's  
15 amended complaint must contain all claims, defendants, and specific factual allegations  
16 that Plaintiff wishes to pursue in this lawsuit. Moreover, Plaintiff must file the amended  
17 complaint on this Court's approved prisoner civil rights form and it must be entitled "First  
18 Amended Complaint." Plaintiff is advised to follow the instructions on the form and, for  
19 each claim, allege the particular facts that show how each Defendant violated his civil  
20 rights.<sup>1</sup>

21 Plaintiff's February 5, 2018 notice (ECF No. 5), March 29, 2018 notice (ECF No. 6),  
22 and June 25, 2018 notice (ECF No. 8) shall be stuck from the docket as all claims,  
23 defendants, and specific factual allegations that Plaintiff wishes to pursue in this litigation  
24  
25

---

26 <sup>1</sup> Plaintiff is advised that the Nevada Department of Corrections is an arm of the  
27 State of Nevada and is not a "person" subject to suit for purposes of 42 U.S.C. § 1983.  
28 See *Doe v. Lawrence Livermore Nat. Lab.*, 131 F.3d 836, 839 (9th Cir. 1997); *Black v. Nevada Dep't of Corr.*, 2:09-cv-2343-PMP-LRL, 2010 WL 2545760, \*2 (D. Nev. June 21, 2010).

1 must be contained within either the original complaint or the First Amended Complaint,  
2 should Plaintiff choose to file an amended complaint.

3 The Court notes that, if Plaintiff chooses to file an amended complaint, Plaintiff shall  
4 file the amended complaint within thirty (30) days from the date of entry of this order. If  
5 Plaintiff chooses not to file an amended complaint, the Court will screen Plaintiff's original  
6 complaint (ECF No. 1-1), only.

### 7 **III. Conclusion**

8 It is therefore ordered that a decision on the application to proceed *in forma*  
9 *pauperis* (ECF No. 1) is deferred.

10 It is further ordered that Plaintiff's motion for appointment of counsel (ECF No. 1-2)  
11 is denied at this time, without prejudice.

12 It is further ordered that Plaintiff's motion for an extension of the copy limit (ECF  
13 No. 1-3) is denied at this time, without prejudice.

14 It is further ordered that the motion for res extincta (ECF No. 4) is granted and the  
15 motion to show cause (ECF No. 3) is dismissed as moot.

16 It is further ordered that, if Plaintiff chooses to file an amended complaint, as  
17 outlined in this order, Plaintiff shall file the amended complaint within thirty (30) days from  
18 the date of entry of this order.

19 It is further ordered that the Clerk of the Court shall send to Plaintiff the approved  
20 form for filing a § 1983 complaint, instructions for the same, and a copy of his original  
21 complaint (ECF No. 1-1), February 5, 2018 notice (ECF No. 5), March 29, 2018 notice  
22 (ECF No. 6), and June 25, 2018 notice (ECF No. 8). If Plaintiff chooses to file an amended  
23 complaint, he must use the approved form and he shall write the words "First Amended"  
24 above the words "Civil Rights Complaint" in the caption.

25 It is further ordered that, if Plaintiff chooses to file an amended complaint, the Court  
26 will screen the amended complaint in a separate screening order.

27 It is further ordered that, if Plaintiff chooses not to file an amended complaint within  
28 thirty (30) days, the Court will screen Plaintiff's complaint (ECF No. 1-1), only.

1 It is further ordered that Plaintiff's February 5, 2018 notice (ECF No. 5), March 29,  
2 2018 notice (ECF No. 6), and June 25, 2018 notice (ECF No. 8) shall be struck from the  
3 docket.

4 DATED THIS 10<sup>th</sup> day of July 2018.

5  
6   
7 VALERIE P. COOKE  
8 UNITED STATES MAGISTRATE JUDGE  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28